

Appl. No. 10/612,197
Docket No. AA537C
Amdt. dated October 3, 2007
Reply to Office Action mailed on July 3, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1-5, 8, and 10-12 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) Over Lassen (U.S. Pat. No. 4,631,062)

Claims 1-5, 8, and 10-12 have been rejected under 35 USC §103(a) as being unpatentable over Lassen, U.S. Patent No. 4,631,062. This rejection is respectfully traversed.

Applicants respectfully submit that the Office Action has failed to set forth a *prima facie* case of obviousness in accordance with M.P.E.P. 2143. Specifically, the Office Action has failed to show where each and every element of Claims 1-5, 8, and 10-12 is taught or suggested by Lassen, such as, e.g., the claimed dimensions.

The Office Action argues that “one would be motivated by the teaching of Lassen to provide a pad with the claimed dimensions...” (Office Action, page 3). The Office Action further cites to *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984) (“where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.”) (emphasis added).

Applicants first submit that the Office Action’s citation to *Gardner* is inapposite here. In *Gardner*, the claimed device did not perform or operate differently from the prior art. *Id.*, at 1349. In fact, the dimensional limitations in *Gardner* were “a verbal difference only.” *Id.*, at 1346. In this instance, however, Applicants claim an “absorbent interlabial device,” and Claim 1 recites dimensions that provide for a majority of the device to fit within the wearer’s interlabial space, while Lassen teaches a larger pad that resides outside the wearer’s interlabial space. As such, Applicants respectfully submit that the Office Action has failed to present any evidence showing that the claimed invention would perform the same as Lassen’s device.

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Applicants further submit that Lassen teaches away from a device having dimensions that allow at least a majority of the device to fit within the wearer's interlabial space. Applicants claim an "absorbent interlabial device," and define such device as being "specifically configured to reside within the interlabial space of a female wearer during use." Applicants state on page 6, line 9, for example, that "[t]he size of the interlabial device 20 is important to its comfort and effectiveness." In addition, "[t]he interlabial device 20 must be of a suitable overall shape and size that allows at least the majority of the device 20 to fit comfortably within the wearer's interlabial space." Specification, at, e.g., page 5, lines 30-31.

Lassen, on the other hand, states at column 5, lines 18-20, that "placing a prominence or other projection entirely within the vestibule promotes... irritation." Lassen also repeatedly teaches a pad that resides outside the wearer's interlabial space. For example, Lassen teaches a pad that extends "over the vulva" (Abstract) (emphasis added). At column 6, lines 29-35, Lassen states: "An anterior region of the pad merges with the posterior region for a generally external disposition about the vulvar region of the wearer over the labia majora..." (emphasis added). Lassen also discloses that "the forwardmost portion or anterior region of the pad folds beyond the vestibule about the vulva of the wearer" (Column 6, lines 57-59) (emphasis added); "the anterior region 56 is configured for external disposition about the forward vulvar region towards the mons pubis, over the labia majora" (Column 10, lines 56-61) (emphasis added); the pad "is at least long enough ... to extend (in use) ... over the anterior of the vulva" (Column 11, lines 30-33) (emphasis added); the sanitary napkin has "a generally external disposition about the vulvar region over said labia majora and spaced from said clitoris" (Claim 1) (emphasis added). Thus, not only is the pad of Lassen structurally different from Applicants' claimed device, but Lassen also teaches away from an absorbent interlabial device as claimed by Applicants.

Finally, the Office Action argues that "[o]ne having ordinary skill in the art would be able through routine experimentation to determine the appropriate size of the interlabial pad in accordance with the intended use." (Office Action, page 2.) Applicants respectfully submit that not only has the Office Action failed to present evidence showing a motivation in Lassen to provide the absorbent interlabial device as claimed by Applicants, but the Office Action has also failed to present any evidence that the claimed

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dimensions are a "result-effective variable." ("A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation." M.P.E.P. 2114.05).

Accordingly, because the Office Action fails to make a *prima facie* case of obviousness in accordance with M.P.E.P. 2143, Applicant respectfully requests that the rejection be withdrawn and that Claims 1-5 and 10-12 be allowed.

Conclusion

In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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By


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